

CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into this ____ day of _____, 20__ (“Effective Date”) by and between the TOWN OF BENNETT (the “TOWN”) and _____, a _____ (hereinafter called “CONTRACTOR”).

The TOWN and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

- 1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents, or which may be reasonably inferred as necessary to produce the results intended by the Contract Documents. The Work is generally described as _____.

ARTICLE 2. CONTRACT TIMES.

- 2.1 CONTRACTOR shall achieve Substantial Completion of the Work within _____ Calendar Days after the date when the Contract Time commences to run. The Work shall be completed and ready for final payment, in accordance with the General Conditions, within _____ Calendar Days after the date when the Contract Times commence to run. The Contract Times shall commence to run on the day indicated in the Notice to Proceed.

ARTICLE 3. CONTRACT PRICE.

- 3.1 The TOWN shall pay in current funds, and the CONTRACTOR agrees to accept in full payment for performance of the Work, subject to additions and deductions from extra and/or omitted work and determinations of actual quantities as provided in the Contract Documents, the Contract Price _____ dollars and _____ cents (\$_____) as set forth in the _____ (“Bid Form”) of the CONTRACTOR dated _____, 20__.
- 3.2 As provided in the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Project Manager as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions.
- 3.3 **Liquidated damages.** The TOWN and the CONTRACTOR agree and recognize that time is of the essence for every time period set forth in the Contract Documents and that the Town will suffer financial loss if the Work is not substantially complete within the time set forth in the Contract Documents, plus any extensions thereof allowed in accordance with this Article. If the Contractor fails to perform the Work within the specified time set forth in the Contract Documents as adjusted pursuant to the General Conditions, the Town and Contractor agree that as liquidated damages, and not as a penalty, for delay in performance the Contractor shall pay the Town in the amount stipulated below for each and every calendar day that expires after the time set forth in

the Contract Documents for Substantial Completion of the Work until the same is finally complete and ready for Final Payment as further provided in the General Conditions.

Liquidated Damages Per Day: \$ _____

ARTICLE 4. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the TOWN as provided in the General Conditions.

4.1 **Progress payments.** The TOWN shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by the Project Manager, twenty (20) days from submittal of CONTRACTOR's Application during construction as provided below and in the General Conditions. All progress payments will be on the basis of the progress of the Unit Price Work based on the number of units completed as provided in the General Conditions.

4.1.1 Prior to Substantial Completion, progress payments will be made in the amount equal to 95 percent of the completed Work, and/or 95 percent of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the TOWN as provided in the General Conditions), but in each case, less the aggregate of payments previously made and such less amounts as the Project Manager shall determine, or the TOWN may withhold, in accordance with the General Conditions. It is the intent of the Parties that this Section 4.1.1 shall be carried out in accordance with § 24-91-101, C.R.S., *et seq.*

4.2 **Final payment.** Upon final completion and acceptance of the Work in accordance with the General Conditions, the TOWN shall pay the remainder of the Contract Price as provided in said General Conditions in accordance with § 24-91-101, C.R.S., *et seq.*

ARTICLE 5. CONTRACTOR'S REPRESENTATIONS.

In order to induce the TOWN to enter into this Contract, CONTRACTOR makes the following representations and commitments:

5.1 CONTRACTOR has examined and carefully studied the Contract Documents, (including any and all Addenda) and the other related data identified in the Bidding Documents including Technical Specifications.

5.2 CONTRACTOR has inspected the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

5.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and furnishing of the Work.

- 5.4 CONTRACTOR has carefully studied all reports of exploration and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions relating to surface or subsurface structures (except Underground Facilities) at or contiguous to the site which have been identified in the General Conditions. CONTRACTOR accepts the determination set forth in said General Conditions. CONTRACTOR acknowledges that such reports and drawings are not CONTRACT DOCUMENTS and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that the TOWN and the Project Manager do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to such reports, drawings or to Underground Facilities at or contiguous to the site. CONTRACTOR has conducted, obtained and carefully studied (or assumes responsibility for having done so) all necessary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 5.4.1 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the General Conditions.
- 5.5 CONTRACTOR is aware of the general nature of work to be performed by the TOWN and others at the site that relates to the Work as indicated in the Contract Documents.
- 5.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests studies and data with the Contract Documents.
- 5.7 CONTRACTOR has given the Project Manager written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the Project Manager is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing the Work.
- 5.8 CONTRACTOR will use its best skill and workmanship to provide Work of the highest quality.

ARTICLE 6. CONTRACT DOCUMENTS

The Contract Documents which constitute the entire agreement between the TOWN and CONTRACTOR concerning the Work are all written documents which define the Work and the obligations of the Contractor in performing the Work and the TOWN in providing compensation for the Work. The Contract Documents shall consist of those listed below, and there are no Contract Documents other than as listed:

- 6.1 Bid Form and Attachments Thereto.
- 6.2 This Contract.
- 6.3 General Conditions.
- 6.4 Supplementary Conditions, if any.
- 6.5 Technical Specifications.
- 6.6 Change Orders, Addenda and other documents which may be required or specified including, but not limited to:
 - 6.6.1 Addenda _____
 - 6.6.2 Documentation submitted by CONTRACTOR prior to Notice of Award.
 - 6.6.3 Notice of Award
 - 6.6.4 Performance Bond and Payment Bond
 - 6.6.5 Certificates of Insurance
 - 6.6.6 Notice to Proceed
 - 6.6.7 Field Order
 - 6.6.8 Work Change Directive
 - 6.6.9 Change Order
 - 6.6.10 Application for Payment
 - 6.6.11 Certificate of Substantial Completion
 - 6.6.12 Claim Release
 - 6.6.13 Final Inspection Report
 - 6.6.14 Certificate of Final Completion
- 6.7 The following which may be delivered or issued after the Effective Date of the Contract and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.
- 6.8 In the event of conflict between the above documents, the prevailing document shall be as follows:
 - 6.8.1 Permits from other agencies as may be required.
 - 6.8.2 Special Provisions and Detail Drawings.
 - 6.8.3 Technical Specifications and Drawings. Drawings and Technical Specifications are intended to be complementary. Anything shown or called for in one and omitted in another is binding as if called for or shown by both.
 - 6.8.4 Supplementary Conditions.
 - 6.8.5 General Conditions.
 - 6.8.6 TOWN Design and Construction Standards, as applicable. Such Standards include, without limitation, Town Standards & Specifications for:

- (a) Design and Construction of Public Improvements
- (b) Roadway and Curb, Gutter and Sidewalk
- (c) Storm Drains
- (d) Water Lines and Distribution Systems

6.8.7 Reference Specifications.

- 6.9 In case of conflict between prevailing references above, the one having the more stringent requirements shall govern.
- 6.10 There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

ARTICLE 7. MISCELLANEOUS.

- 7.1 Terms used in this Contract which are defined in the General Conditions shall have the meanings indicated in said General Conditions.
- 7.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.
- 7.3 The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, contracts and obligations contained in the Contract Documents.
- 7.4 CONTRACTOR agrees to comply with all federal, state and local non-discrimination rules and regulations so long as CONTRACTOR is under contract with the TOWN, including but not limited to the federal laws and regulations set forth in Exhibit B, attached hereto and incorporated herein by reference.
- 7.5 By executing this agreement, CONTRACTOR warrants that:
 - 1. CONTRACTOR has not allowed any competing bidder or employee or agent thereof to see CONTRACTOR's bid or to know of its content.
 - 2. CONTRACTOR has not discussed the contents of its bid with any competing bidder, or any other person who a reasonably prudent person would believe would be likely to transmit information to a competing bidder.

Failure to abide by the above provisions relating to collusion shall render the contractor liable to the TOWN for damages, including, without limitations, payment of the bid bond

as liquidated damages. In addition, the TOWN may void any contract entered into with a bidder guilty of collusion.

ARTICLE 8. OTHER PROVISIONS.

- 8.1 **Third party beneficiaries.** The Contract is not intended to create any right for the public or any member thereof, any subcontractor or supplier, or any other third party, or to authorize anyone not a party to the contract to maintain a suit to enforce its terms. The duties, obligations, and responsibilities of the parties to the contract, with respect to third parties, shall remain as imposed by law. This section shall not apply to any surety to the extent it is acting under any labor and materials bond or performance bond entered into by the CONTRACTOR.
- 8.2 **Integration.** The contract documents represent the entire integrated agreement between the TOWN and the CONTRACTOR and supersede all prior negotiations, representations, or agreement, whether written or oral. No modification, amendment, waiver or notation shall be valid unless incorporated in a written amendment or change order properly executed by both parties.
- 8.3 **Severability.** To the extent that the performance of the parties' obligations may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision of the contract be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other contract term or provision.
- 8.4 **Waiver.** If the TOWN fails to enforce any term of the contract for any period, this shall not act as a waiver. No waiver of any breach of any term thereof shall be effective unless set forth in a writing signed by both the Project Manager and CONTRACTOR. The waiver of any breach of a term thereof shall not be construed as waiver of any other term.
- 8.6 **Compliance with laws.** At all times during the performance of the contract, CONTRACTOR shall strictly adhere to all applicable federal, state and TOWN laws that have been or may hereafter be established. This shall include, without limitation, the United States Department of Labor, Occupational Safety and Health Administration (OSHA) standards for excavating and trenching operations. As used in this section, and hereafter, the term "laws" shall include, without limitation, all federal, state and TOWN codes, charters, ordinances, laws, standards, rules and regulations.
- 8.7 **Choice of law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Adams County, Colorado, and in no other court. CONTRACTOR hereby waives its right to challenge the personal jurisdiction of the District Court of Adams County over it.

IN WITNESS WHEREOF, the TOWN and CONTRACTOR have signed this Contract in duplicate. One counterpart each has been delivered to the TOWN and CONTRACTOR. All portions of the Contract Document have been signed, initialed or identified by the TOWN and CONTRACTOR.

This Contract is effective on the Effective Date.

TOWN:

CONTRACTOR:

TOWN OF BENNETT

By: _____
Mayor

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest: _____
Town Clerk

Attest: _____

Address for giving notices:
Town of Bennett
207 Muegge Way
Bennett, CO 80102

Address for giving notices:

EXHIBIT A

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set

forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and

related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and

mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime

contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the

Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction

knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier

participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated

may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

- 1.0 Abnormal Weather: Snowfall, rainfall, freezing temperatures, or wind conditions, in excess of those encountered in the Town during the past 10 years and which cause delay in the Contractor's performance.
- 1.1 Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.
- 1.2 Agreement: The written contract between the Town and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3 Application for Payment: The form accepted by Project Manager and used by Contractor to request progress or final payments and accompanied by supporting documentation as is required by the Contract Documents.
- 1.4 Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5 Bid: The proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 Bidding Documents: The Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.7 Bidding Requirements: The Invitation to Bid, Instructions to Bidders, and the Bid Form.
- 1.8 Bonds: Performance and Payment bonds and other instruments of security.
- 1.9 Change Order: A document recommended by Project Manager, and signed by Contractor and the Town authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times and issued on or after the Effective Date of the Agreement.
- 1.10 Contract Day: A Contract Day specifies that construction will be completed Monday through Friday, excluding Saturdays, Sundays, legal holidays and Abnormal Weather days.
- 1.11 Contract Documents: The Agreement and all documents specified in the Agreement as constituting the Contract Documents.
- 1.12 Contract Price: The moneys payable by the Town to Contractor for completion of the Work in accordance with the Contract Documents (subject to the provisions of these General Conditions applicable to Unit Price Work).
- 1.13 Contract Times: The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by Project Manager's written recommendation of final payment.
- 1.14 Contractor: The person, firm or corporation with whom the Town has entered into the Agreement, and its

duly authorized agents.

- 1.15 Defective: Work that is unsatisfactory, faulty or deficient, not conforming to the Contract Documents, or not meeting the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Project Manager's recommendation of final payment (unless responsibility for the protection thereof has been assumed by the Town at Substantial Completion).
- 1.16 Drawings: The drawings referred to in the Contract Documents which show the scope, extent and character of the Work to be furnished and performed by Contractor and which have been prepared or approved by the Town. Shop drawings are not Drawings as so defined.
- 1.17 Effective Date of the Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.18 Field Order: A written order issued by Project Manager which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
- 1.19 Hazardous Waste: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended.
- 1.20 Laws and Regulations (or Laws or Regulations): Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction over the project.
- 1.21 Liens: Liens, charges, security interests or encumbrances upon real property or personal property.
- 1.22 Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date.
- 1.23 Notice of Award: The written notice by the Town to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, the Town will sign and deliver the Agreement.
- 1.24 Notice to Proceed: A written notice given by the Town to Contractor (with a copy to Project Manager) fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.
- 1.25 Partial Utilization: Use by the Town of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.26 PCBs: Polychlorinated biphenyls.
- 1.27 Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- 1.28 Plans: The term plans as used in the Contract Documents shall have the same meaning as Drawings.
- 1.29 Product: Includes materials, equipment and systems.
- 1.30 Project: The total construction of the work to be provided under the Contract Documents or a part as indicated elsewhere in the Contract Documents.

- 1.31 Project Manager: The _____, or authorized representative of such person.
- 1.32 Provide: Furnish and install specified materials and equipment, unless the context requires otherwise.
- 1.33 Radioactive Material: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 1.34 Resident Project Representative: The authorized representative of the Town who may be assigned to the site or any part thereof.
- 1.35 Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.36 Shop Drawings: All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 1.37 Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.38 Subcontractor: An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of work at the site.
- 1.39 Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of Project Manager as evidenced by Project Manager's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by Project Manager's written recommendation of final payment.
- 1.40 Supplementary Conditions: The part of the Contract Documents which amends or supplements these General Conditions.
- 1.41 Supplier: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the work.
- 1.44 Town: Shall mean the Town of Bennett, Colorado, and its duly authorized agents. Except as otherwise specified in the Contract Documents, the responsibilities of the Town as provided for in these General Conditions shall be performed by the Town's Project Manager.
- 1.45 Town's Consultant: A person, firm or corporation having a contract with the Town to furnish services as the Town's independent professional associate or consultant with respect to the Project.
- 1.46 Underground Facilities: All pipeline, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
- 1.47 Unit Price Work: Work to be paid for on the basis of unit prices.
- 1.48 Work: The entire completed construction or the various separately identifiable parts thereof required to be

furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, furnishing and incorporating materials and equipment into the construction, performing or furnishing services, and furnishing documents, all as required by the Contract Documents.

- 1.49 Work Change Directive: A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by the Town and recommended by Project Manager, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.1 or 4.2 or emergencies under paragraph 6.29. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in these General Conditions.
- 1.50 Written Amendment: A written amendment of the Contract Documents, signed by the Town and Contractor on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Delivery of Bonds:

- 2.0 When Contractor delivers the executed Agreement to the Town, Contractor shall also deliver to the Town such Bonds and Certificates of Insurance as Contractor may be required to furnish in accordance with Article 5.

Copies of Documents:

- 2.1 The Town shall furnish to Contractor one (1) copy of the Contract Documents for execution of the work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

- 2.2 The Contract Times will commence to run on the day indicated in the Notice to Proceed.

Starting the Work:

- 2.3 Contractor shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to that date.

Before Starting Construction:

- 2.4 Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures and all applicable field measurements shown thereon. Contractor shall promptly report in writing to Project Manager any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Project Manager before proceeding with any Work affected thereby.
- 2.5 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), Contractor shall submit to Project Manager, in a format satisfactory to the Project Manager, the following schedules for review:
- 2.5.1 a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestone specified in the Contract Documents;

- 2.5.2 a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal.

Preconstruction Conference:

- 2.6 Before any Work starts at the site, a conference attended by Contractor, Project Manager and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.5, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.7 Initially Acceptable Schedules; Monthly Progress Reports:

- 2.7.1 Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment, the Contractor, Project Manager and others as appropriate will hold a conference to review the Application for Payment. No progress payment shall be made to Contractor until the progress schedule is submitted to and accepted by the Project Manager as provided herein. The progress schedule provide an orderly progression of the work and a completion date within specified milestones and the contract times, and shall be in content and format acceptable to the Project Manager. Such acceptance will neither impose on Project Manager responsibility for the sequencing, scheduling or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor. Contractor's schedule of Shop Drawing and Sample submissions shall provide a workable arrangement for reviewing and processing the required submittals, and shall be acceptable to the Project Manager.

- 2.7.2 The Contractor shall prepare at least monthly a progress report for the project in a form, in sufficient detail, and of a character approved by the Project Manager. The progress report shall specify an estimated percentage of completion (including percentage of completion of each activity and event shown on the progress schedule), whether the project is on schedule and, if not, the reasons therefor and any proposed adjustments to the schedule, as well as the number of contract days worked for each category of labor and the projected Work to be completed in the next succeeding month. Any adjustment in the progress schedule shall be in accordance with paragraph 6.5.

Figured Dimensions to Govern

- 2.8 Dimensions and elevations indicated on the drawings shall be accurately followed even if different from scaled measurements. No work indicated on the drawings, the dimensions of which are not indicated, shall be executed until necessary dimensions have been obtained from the Town.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

- 3.0 The Contract Documents comprise the entire agreement between the Town and Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Colorado.
- 3.1 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe the Work, materials or equipment, such words or phrases shall be interpreted in

accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by Project Manager as provided in these General Conditions.

3.2 Reference to Standards & Specifications of Technical Societies; Reporting and Resolving Discrepancies:

- 3.2.1 Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or laws or regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 3.2.2 If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier, Contractor shall report it to Project Manager in writing at once, and Contractor shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.29) until an amendment or supplement to the Contract Documents has been issued. Upon notification to the Project Manager, the Contractor shall proceed with other parts of the Work not affected by the conflict, error, ambiguity or discrepancy.
- 3.2.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:
 - 3.2.3.1 the provisions of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - 3.2.3.2 the provisions of any laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).
- 3.3 No provision of any standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of the Town, Contractor or Project Manager, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Town, Project Manager or any of Project Manager's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with any provision of the Contract Documents.
- 3.4 Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgement of Project Manager as to the Work, it is intended that such requirement, direction, review or judgement will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Project Manager any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to any provisions of the Contract Documents.

Amending and Supplementing Contract Documents:

- 3.5 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- 3.5.1 a formal Written Amendment,
 - 3.5.2 a Change Order, or
 - 3.5.3 a Work Change Directive.
- 3.6 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
- 3.6.1 a Field Order,
 - 3.6.2 Project Manager's approval of a Shop Drawing or Sample, or
 - 3.6.3 Project Manager's written interpretation or clarification.
 - 3.6.4 It is understood and agreed that the written terms and provisions of this Agreement shall supersede all oral statements of representatives of the Town, and oral statements shall not be effective or be construed as being a part of this Agreement.

Reuse of Documents:

- 3.7 Contractor, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the Town (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies thereof) prepared by or bearing the seal of an Engineer or an Engineer's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of the Town and specific written verification or adaption by Project Manager.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands:

- 4.0 The Town shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor. The Town shall identify any encumbrances or restrictions of record specifically related to use of the lands furnished with which Contractor will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Town, unless otherwise provided in the Contract Documents. If Contractor and the Town are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in the Town's furnishing these lands, rights-of-way or easements, Contractor may make a claim therefor as provided in Articles 10 or 11. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Subsurface and Physical Conditions:

- 4.1 The Contractor is responsible for examining and determining for itself the location and nature of the proposed Work, the amount and character of the labor and materials required therefor, and the difficulties which may be encountered. The Contractor may not rely on oral or written representations made by the Town, including reports and drawings, unless the Town has guaranteed in writing that such representation is factually accurate, and by submitting its Bid, Contractor waives all liability for any error in any representation made by the Town to Contractor. Contractor shall inspect the site and its surroundings and conduct such supplementary examinations, investigations, and tests concerning conditions at or contiguous to the site (including surface and subsurface) which may affect cost, progress, performance, or furnishing

of the Work or which relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto for performing the Work in accordance with the Contract Documents. By failing to make such an inspection, the Contractor waives all rights to claim extra payment or time extensions due to unexpected conditions, which could have been determined had the site been reasonably inspected. If concealed or unknown conditions differ materially from those ordinarily encountered and generally recognized as inherent in the Work, or differ materially from the conditions indicated in the Contract Documents, then an equitable adjustment in the Contract Price or in the Contract Time will be allowed by change order as provided in Article 10 or Article 11 respectively. By submitting its Bid, the Contractor represents that the Contractor's observations at the site are not inconsistent with the requirements of the proposed Contract Documents, unless otherwise noted by the Contractor.

4.1.1 **Reports and Drawings:** Reference is made to the Supplementary Conditions for identification of the following reports of explorations and tests of subsurface conditions at the site of the Work:

4.1.1.1 **Subsurface Conditions:** Not Applicable.

4.1.1.2 **Physical Conditions:** Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by Project Manager in preparing the Contract Documents.

4.1.2 **Limited Reliance by Contractor Authorized; Technical Data:** Reports and drawings identified pursuant to paragraph 4.1 are not Contract Documents. Unless otherwise set forth in the Contract Documents, or the Town has otherwise guaranteed in writing that such representation is factually accurate, Contractor may not rely upon or make any claim against the Town, Project Manager or Project Manager's consultants with respect to the accuracy of any "technical data" contained in reports and drawings and Contractor may not rely upon or make any claim against the Town, Project Manager or Project Manager's consultants with respect to:

4.1.2.1 The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto, or

4.1.2.2 Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.1.2.3 Any Contractor interpretation of, conclusion drawn from, any "technical data" or any such data, interpretations, opinions or information.

4.1.3 Contractor shall not be entitled to any adjustment in the Contract Price or Times if:

4.1.3.1 Contractor knew of the existence of such conditions at the time Contractor made a final commitment to the Town with respect to Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or

4.1.3.2 The existence of such conditions could reasonably have been discovered or revealed as a result of an examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment.

4.1.4 If the Town and Contractor are unable to agree on entitlement to or as to the amount or length of any equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as

provided in Articles 10 or 11. However, the Town shall not be liable to Contractor for any claims, costs, losses or damages sustained by Contractor on or in connection with any other project or anticipated project.

4.2 Physical Conditions - Underground Facilities:

4.2.1 **Shown or Indicated:** The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to the Town by the owners of such Underground Facilities or by others.

4.2.1.1 The Town shall not be responsible for the accuracy or completeness of any such information or data; and

4.2.1.2 The cost of all of the following will be included in the Contract Price and Contractor shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in these General Conditions, and repairing any damage thereto resulting from the Work.

4.2.2 **Not Shown or Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.29), identify the owner of such Underground Facility and give written notice to that owner and to the Town. Contractor shall be responsible for the safety and protection of such Underground Facility as provided in these General Conditions. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the Town and Contractor are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, Contractor may make a claim therefor as provided in Articles 10 or 11. However, the Town, Project Manager and Project Manager's Consultants shall not be liable to Contractor for any claims, costs, losses or damages incurred or sustained by Contractor on or in connection with any other project or anticipated project.

Reference Points:

4.3 The Town shall provide engineering surveys to establish baseline and benchmarks for construction which, in Project Manager's judgment, are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the Town. Contractor shall report to Project Manager whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.4 The Town shall provide survey reference points, construction stakes, lines and grades required for the completion of the work specified in the specifications, on the plans, or in any Supplementary Conditions. Additional staking requested by the Contractor will be at the Contractor's expense. When the Contractor requires staking, the Contractor shall notify the Town of its requirements in writing a reasonable length of time in advance of starting work that require construction staking. Under no circumstances shall a notice of less than two contract days be considered a reasonable length of time. Failure of the Contractor to provide

two contract days written notice to the Town of any staking requests shall relieve the Town from any responsibility for additional costs or delays caused by such failure. Stakes set by the Town shall be carefully preserved by the Contractor. When stakes are destroyed or damaged, the Contractor will be charged for the cost of necessary replacement or restoration of stakes. The charge for replacement and restoration of stakes will be deducted from any moneys due or to become due the Contractor.

Asbestos, PCB's Petroleum, Hazardous Waste or Radioactive Material:

4.5 The Contractor agrees to comply with all present and future applicable laws and regulations affecting land, water, air, and the products thereof, which are now or may become applicable to operations covered by this Agreement or arising out of the performance of such operations. The Contractor shall not cause or allow, in connection with the Work hereunder, the discharge, emission, release, or escape of any hazardous or toxic substance and/or waste, pollutant, contaminant or other substance including asbestos or PCBs or other hazardous substance, including those defined in 42 U.S.C. Section 9601(14)(hereinafter all called "contaminated media") in violation of any laws or regulations, and shall pay for all costs and damages incurred as a result thereof. The Contractor agrees to report to the Project Manager (and to all appropriate governmental authorities if caused or allowed by the Contractor) immediately all accidents or occurrences resulting in actual or threatened damage to the Work site or to the environment by contaminated media, including discovery of accidents or occurrences in which contaminated media are or may be encountered, or which results in contaminated media. The Contractor shall stop Work immediately upon encountering any contaminated media or potentially contaminated media and shall thereafter, upon the Project Manager's written directive, proceed as directed by the Project Manager.

ARTICLE 5 - BONDS AND INSURANCE

5.0 Performance, Payment and Other Bonds:

5.0.1 Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by laws or regulations, and shall be executed by sureties named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. The Contractor shall furnish the performance and payment bond in the form provided in the Contract Documents or approved by the Town, the earlier of ten (10) days after the Town has issued the notice of award or delivery of the executed Agreement. The Town reserves the right to exclude any Surety Company on any ground it deems appropriate. The cost of the bonds shall be included in the bid.

5.1 If the surety on any Bond furnished by Contractor is declared bankrupt, becomes insolvent, has its right to do business terminated in any state where part of the Project is located, or ceases to meet any of the requirements of the Contract Documents, Contractor shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to the Town.

5.2 Licensed Sureties and Insurers; Certificates of Insurance:

5.2.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies acceptable to the Town that are

duly licensed to transact business in the State of Colorado and to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

- 5.2.2 Contractor shall deliver to the Town, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by the Town or any other additional insured) which Contractor is required to purchase and maintain in accordance with paragraph 5.3. The certificates shall be reviewed and approved by the Town prior to execution of the Agreement. The Town shall have the right to request and obtain copies of any insurance policies required under paragraph 5.3. The completed certificates of insurance shall be sent to the person and address specified in the Special Conditions.

5.3 Contractor's Insurance Requirements:

- 5.3.1 The Contractor agrees to procure and maintain, at its own cost, the policy or policies of insurance required by these General Conditions, in addition to any other insurance requirements imposed by the Contract Documents or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- 5.3.2 Contractor shall procure and maintain, and shall cause each Subcontractor or Supplier of the Contractor to procure and maintain (or shall insure the activity of Contractor's Subcontractors and Suppliers in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- 5.3.2.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.
- 5.3.2.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
- 5.3.2.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
- 5.3.2.4 Protected Information Liability covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of

privacy rights through improper use or disclosure of protected information with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate.

- 5.3.2.5 Professional Liability Insurance covering any damages caused by an error, omission or any negligent act with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 5.3.2.6 Crime Insurance including employee dishonesty coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 5.3.2.6 Umbrella/Excess Liability, excess of the liability coverage listed above shall be in the amount of TWO MILLION DOLLARS (\$2,000,000).
- 5.3.3 The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Town, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- 5.3.4 Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 5.3.5 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.
- 5.3.6 The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

- 6.0 Contractor shall supervise, inspect and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the

Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to ensure that the completed Work complies accurately with the Contract Documents.

- 6.1 Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall be subject to approval by the Town and who shall not be replaced without written notice to the Town except under extraordinary circumstances. Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications to the superintendent shall be as binding as if given to Contractor. The superintendent shall be the normal recipient of work site communications from the Project Manager. Important communications from the Project Manager shall be in writing and shall be made by field order, or a reasonable facsimile thereof. Other important communications from the Contractor to the Town shall also be in writing. Further, the superintendent shall designate agents at the site to receive such communications when the superintendent is away from the site. When the superintendent is absent, such persons shall be authorized to act immediately on emergency communications given by the Project Manager. If the Project Manager issues an emergency communication to the Contractor, but there is no authorized representative of the Contractor able to act on the emergency communication, the Project Manager may take whatever action is necessary to deal with the emergency, at the Contractor's cost. If the Town finds it necessary to communicate at the work site with Contractor personnel authorized to receive such communications and none are available to receive such communications, the Town may suspend the Contractor's operations at the work site which are affected by the communications until such communications can be accomplished. Owner reserves the right to revoke its acceptance of the superintendent at any time on the basis of a reasonable objection. Upon such revocation, the Contractor shall submit an acceptable replacement for the rejected superintendent.

Labor, Materials and Equipment:

- 6.2 Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the Town's written consent given after prior written notice to Project Manager. No extra payment will be paid to the Contractor by the Town due to labor overtime or other increased costs of performing the Work on Saturdays, Sundays, legal holidays, or at night. Should the Contractor desire to work on Saturdays, Sundays, legal holidays, or at night between the hours of 7:00 p.m. and 7:00 a.m. on Contract Days the Contractor shall submit a written request to the Project Manager at least twenty-four hours in advance. If approval is given by Project Manager to Contractor for authorized overtime work, Project Manager's and Project Manager's authorized personnel will charge overtime and other incidental administrative expenses necessary for performing inspections on Saturdays, Sundays, legal holidays, or at night between the hours of 7:00 p.m. and 7:00 a.m., the Contractor will be responsible to pay for all such rates and charges, and shall not be granted a Contract Price increase for such charges.
- 6.3 Unless otherwise specified in the Contract Documents, Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 6.4 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the Town. If required by Project Manager, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials

and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

- 6.5 Contractor shall adhere to the progress schedule established in accordance with paragraph 2.7 as it may be adjusted from time to time as provided below:
 - 6.5.1 Contractor shall submit to Project Manager for acceptance (to the extent indicated in paragraph 2.7) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and will comply with any applicable provisions of the Contract Documents.
 - 6.5.2 Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 11.0. Such adjustments may only be made by a Change Order or Written Amendment.

6.6 Substitutes and "Or-Equal" Items:

- 6.6.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words indicating that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be accepted by Project Manager under the following circumstances:
 - 6.6.1.1 **"Or-Equal"**: If in Project Manager's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Project Manager as an "or-equal" item, in which case review and approval of the proposed item may, in Project Manager's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.
 - 6.6.1.2 **Substitute Items**: If in Project Manager's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under subparagraph 6.6.1.1, it will be considered a proposed substitute item. Contractor shall submit sufficient information as will allow Project Manager to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the Project Manager will include the requirements of this paragraph and such additional requirements as Project Manager may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by Project Manager from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall first make written application to Project Manager for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Town for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified

will be identified in the application, and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by Project Manager in evaluating the proposed substitute. Project Manager may require Contractor to furnish additional data about the proposed substitute.

- 6.6.2 **Contractor's Expense:** All data to be provided by Contractor in support of any proposed "or-equal" or substitute item will be at Contractor's expense.
- 6.6.3 **Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction, if acceptable to Project Manager. Contractor shall submit sufficient information to allow Project Manager, in Project Manager's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Project Manager will be similar to that provided in subparagraph 6.6.1.2.
- 6.6.4 **Project Manager's Evaluation:** Project Manager will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraph 6.6.1. or 6.6.3. Project Manager will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without Project Manager's prior written acceptance evidenced by either a Change Order or an approved Shop Drawing. The Town may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. Project Manager will record time required by Project Manager and Project Manager's Consultants in evaluating substitutes proposed or submitted by Contractor and in making changes in the Contract Documents (or in the provisions of any other direct contract with the Town for work on the Project) occasioned thereby. Whether or not Project Manager accepts a substitute item so proposed or submitted by Contractor, Contractor shall reimburse the Town for the charges of Project Manager and Project Manager's Consultants for evaluating each such proposed substitute item.

6.7 Subcontractors, Suppliers and Others:

- 6.7.1 Contractor shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom the Town may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom Contractor has reasonable objection.
- 6.7.2 Where the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to the Town with the Bid in the Bid Form prior to the Effective Date of the Agreement for acceptance by the Town, and if Contractor has submitted a list thereof in accordance with the Contract Documents, the Town's acceptance of any such Subcontractor, Supplier, or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable substitute. No acceptance by the Town of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the Town to reject defective Work.
- 6.7.3 Contractor shall be fully responsible to the Town for all acts and omissions of the Subcontractors, Suppliers, and other persons and organizations described in paragraph 6.7.2, whether performing or furnishing any of the Work under a direct or indirect contract with Contractor, in the same

manner as Contractor is responsible under the Contract Documents for Contractor's own acts and omissions. The Town may contact any Subcontractor, Supplier or other person or organization to determine the status of any payments due from the Contractor, may furnish to any such Subcontractor, Supplier or other person or organization evidence of amounts paid to Contractor in accordance with Contractor's Applications for Payment, and may (but is not required to) make joint check arrangements for the payment of any such Subcontractor, Supplier or other person or organization. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between the Town and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Town to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization.

- 6.7.4 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under any direct or indirect contract with Contractor. Contractor shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Project Manager through Contractor.
- 6.8 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 6.9 All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the Town.
- 6.10 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the Town and workers who may be employed by the Town in the vicinity of the work under this Agreement and shall conduct operations to minimize interference with the work of such contractors, or workers. The Contractor shall promptly make good at Contractor's own expense any injury or damage which results from the Contractor's work and which is sustained by other contractors, employees of the Town, or others. Any difference or conflict which may arise between the Contractor and other contractors shall be resolved as determined by the Town. If the work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall have no claim against the Town on that account other than an extension of time. If any part of the Contractor's work is dependent upon the quality and completeness of work performed under another contractor, the Contractor shall inspect the other contractor's work and promptly report defects therein which render such work unsuitable for the proper execution of the work under this contract. Failure to report such defects to the Town shall constitute the Contractor's acceptance of such work as suitable to receive the Contractor's work.

Patent Fees and Royalties:

- 6.11 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Town its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Town in the Contract Documents. To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the Town, its officers, employees, and agents from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

- 6.12 Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all permits and licenses relating to the Work. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections to the Work, and the Town shall pay all charges of such utility owners for capital costs related to the work such as plant investment fees.
- 6.12.1 Prior to the commencement date for the Work set forth in the Notice to Proceed, the Contractor and all subcontractors shall be or shall become licensed in accordance with all applicable laws and regulations.
- 6.12.2 If water is required for the project, Contractor shall obtain a bulk water meter from the Town in accordance with applicable requirements.
- 6.12.3 Contractor shall obtain a Right of Way Permit from the Town for all Work to be completed within the Town right of way.
- 6.12.4 Contractor shall obtain and pay for all other necessary construction-related permits and licenses.

Laws and Regulations:

- 6.13 Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable laws and regulations, the Town shall not be responsible for monitoring Contractor's compliance with any laws or regulations.
- 6.13.1 If Contractor performs any Work knowing or having reason to know that it is contrary to any laws or regulations, Contractor shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

Taxes:

- 6.14 The Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of municipalities and counties thereof on all materials to be incorporated into the Work. The Owner will, upon request, furnish the required certificates of tax exemption to the Contractor for use in the purchase of supplies and materials to be incorporated into the Work. The Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by the Contractor, or to supplies or materials not incorporated into the Work. The Owner will not reimburse the Contractor for any sales or use taxes paid to the State or any county or municipality from which Owner or the Project are exempt.

Use of Premises:

- 6.15 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site, land, areas identified in and permitted by the Contract Documents, other land and areas permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
- 6.16 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste

materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the site clean and ready for occupancy by the Town at Substantial Completion of the Work. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

- 6.17 Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

- 6.18 Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to these General Conditions) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Project Manager for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to the Town.

Safety and Protection:

- 6.19 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connections with the work. The Contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to:
- 6.19.1 All employees at the work site and all other persons affected by the work;
 - 6.19.2 All materials and equipment in the care, custody, or control of the Contractor or subcontractor, whether stored on or off the work site;
 - 6.19.3 All Work;
 - 6.19.4 All property at the site including walks, pavements, roadways, structures and utilities, and all neighboring property which may be affected by the Work; and
 - 6.19.5 All plant materials including without limitation grasses, trees, and shrubs except where specifically identified for removal.
- 6.20 The Contractor shall repair or replace any damage, injury, or loss to all public or private property caused directly or indirectly, in whole or in part, by the Contractor or any subcontractor or their employees or agents or anyone directly or indirectly employed by them or anyone for whose acts any one of them may be responsible. The Contractor shall give all notices and comply with all applicable laws bearing on the safety of persons or property or their protection from damage, injury, or loss.
- 6.21 The Contractor shall carry on the work in a workmanlike manner which will cause a minimum amount of inconvenience to any person consistent with the reasonable requirements of the work. The Contractor shall use its best efforts to notify neighboring property owners at least forty-eight (48) hours in advance of any work which may interfere with or damage the operations of any equipment located in a right of way or utility easement, or which may block any entrance or otherwise cause difficulty to occupants of affected property. The Contractor shall avoid any damage to utility equipment, and shall restore all property to usable condition as soon as possible. The Contractor shall maintain at least one means of access to all property by all vehicles at all times, insofar as practicable. The Contractor, subcontractors, and all of their employees and agents shall at all times be courteous to the public while engaged in the Work.

- 6.22 The Contractor shall provide at its own cost and expense all reasonable methods for adequately draining the work and shall assume full responsibility and liability for damage to any person or property resulting from inadequate or excessive drainage unless the damage resulted from a design error which was caused by the Town or by a consultant of the Town, or is due to sequencing of projects beyond the Contractor's control. The Contractor shall be responsible for the preservation and protection of storm water collection systems and other natural and developed drainage ways which may be affected by work done under the contract. The Contractor is required to notify the Project Manager prior to initiation of the work when the work may diminish the system's capabilities or may redirect water flow. This notification process does not, however, relieve the Contractor of any responsibility for damage which may result from the Contractor's operations.
- 6.23 The Contractor shall provide and maintain suitable, weathertight, plastic or painted sanitary toilet facilities for any and all workers engaged on the Work. The Contractor shall keep the toilets clean. When the toilet facilities are no longer required, the Contractor shall promptly remove them from the site and disinfect and treat the site area as required. Toilet facilities of any existing building at or near the site shall not be used by employees or agents of the Contractor or subcontractors unless the Project Manager grants prior written approval.
- 6.24 The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.19 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier or any other person or organization directly or employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied promptly by Contractor. Contractor's duties and responsibilities for safety and for protection of the work shall continue until such time as all the Work is completed and Project Manager has issued a notice to the Town and Contractor that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- 6.25 The Contractor shall take all measures necessary to mitigate the impact of weather so that the project may continue on schedule. In no event shall the Town be liable for extra costs incurred on materials and any part of the Work due to Contractor's failing to take all measures necessary to protect the Work from weather and Contractor shall not be entitled to such claims. Also, no extension of the Contract Time shall be allowed if the Contractor is able, notwithstanding the weather, to proceed with other Work under the Contract.
- 6.26 When reasonable and appropriate, equipment, tools, and materials must be kept out of traveled ways such as streets, alleys, and sidewalks. Equipment which may endanger vehicular traffic must be lighted and marked to warn motorists. No sand, gravel, rocks, mud, dirt, or other debris may be deposited upon any street, alley, or sidewalk. If the Contractor does not comply with this provision, the Town may have the debris removed and the costs or removal may be deducted from any payment to the Contractor or charged to the Contractor directly.
- 6.27 The Contractor shall satisfy all environmental quality standards imposed by laws and regulations and take reasonable steps to minimize the environmental impact of the work. These environmental quality standards include, without limitation, noise control, air pollution control, water pollution control, and dust control, which may be placed at risk by the activities of the Contractor. The Contractor shall not burn any trash, rubbish, or other materials except as specifically permitted by law. The Contractor shall not pollute the water of any pond, lake, stream, ditch, or other water course on Town property. The Contractor shall not deposit in any part of the Town water system any substance or material that will injure or obstruct the system, or contaminate or pollute the water or obstruct the flow of water. The Contractor shall comply with all laws and regulations concerning noise control. If the Contractor believes that the work will violate

any such provisions, the Contractor shall notify the project manager in advance. The Contractor shall comply with all applicable laws and regulations regarding industrial and prohibited wastewater discharges. The Contractor shall not discharge visible emissions from motor vehicles. Should the Contractor or its subcontractors fail to satisfy environmental quality standards, the Town shall have the right to employ outside assistance, Town employees, or a private contractor to provide control and clean up, as necessary. All such costs may be deducted from any payment due to the Contractor or charged to the Contractor directly.

Safety Representative:

- 6.28 Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

- 6.29 Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws or regulations.

Emergencies:

- 6.30 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Project Manager prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Project Manager determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change directive or Change order will be issued to document the consequences of such action.

6.31 Shop Drawings and Samples:

- 6.31.1 After checking and verifying all field measurements, Contractor shall submit to Project Manager for review and approval in accordance with the accepted schedule of shop drawings and sample submittal, three copies of all shop drawings, which shall have been checked and approved by the Contractor. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show Project Manager the materials and equipment Contractor proposes to provide and to enable Project Manager to review the information for the limited purposes required by paragraph 6.26.
- 6.31.2 Contractor shall also submit Samples to Project Manager for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended to enable Project Manager to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.32 Submittal Procedures:

- 6.32.1 Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
 - 6.32.1.1 all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,
 - 6.32.1.2 all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and
 - 6.32.1.3 all information relative to Contractor's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.
- 6.32.2 Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other

Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

- 6.32.3 Each submittal will bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
- 6.32.4 At the time of each submission, Contractor shall give Project Manager specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents the notice will be a written communication separate from the submittal the Contractor shall cause a specific notation to be made on each Shop Drawing and Sample submitted to Project Manager for review and approval of each such variation.
- 6.33 Project Manager will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by Project Manager as required by paragraph 2.7. Project Manager's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project. Project Manager's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the whole in which the item functions. Contractor shall make corrections required by Project Manager, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals.
- 6.34 Project Manager's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Project Manager's attention to each such variation at the time of submission as required by paragraph 6.26 and Project Manager has given written approval of each such variation by specific written notation incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by Project Manager relieve Contractor from responsibility for complying with the requirements of paragraph 6.26.
- 6.35 Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by Project Manager as required by paragraph 2.7, any related Work performed prior to Project Manager's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

Continuing the Work:

- 6.36 Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Town. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Town and Contractor may otherwise agree in writing.

6.37 Contractor's General Guarantee:

- 6.37.1 Contractor warrants and guarantees to the Town, Project Manager and Project Manager's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 6.37.1.1 abuse, modification or improper maintenance or operation by persons other than Contractor, Subcontractors or Suppliers; or

- 6.37.1.2 normal wear and tear under normal usage.
- 6.37.2 Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the work in accordance with the Contract Documents:
 - 6.37.2.1 observations by Project Manager or any Consultant of the Town;
 - 6.37.2.2 recommendation of any progress or final payment by Project Manager;
 - 6.37.2.3 the issuance of a certificate of Substantial Completion or any payment by the Town to Contractor under the Contract Documents;
 - 6.37.2.4 use or occupancy of the Work or any part thereof by the Town;
 - 6.37.2.5 any acceptance by the Town or any failure to do so;
 - 6.37.2.6 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Project Manager;
 - 6.37.2.7 any inspection, test or approval by others; or
 - 6.37.2.8 any correction of defective Work by the Town.
- 6.37.3 The Contractor warrants that, unless otherwise specified in the Contract Documents, the materials and equipment installed in the Work will be new, merchantable, and fit for the purpose for which they are intended, and that the Work will be performed in a workmanlike manner. The Contractor also warrants the workers who perform the Work will be sufficiently skilled to produce a high quality product which is free of blemishes, (surface defects) and flaws (internal defects).
- 6.37.4 The Contractor is under a continuing duty to warn the Town of any possible defect in the design of the Work and materials incorporated in the Work and against potentially unsafe uses of products incorporated in the Work which may cause personal injury or property damage, as soon as the Contractor discovers the possible defect or has notice that the product may be unsafe. The Contractor's duty under this paragraph shall be continuing, and shall not expire when the Town accepts the Work or when the Contractor's guarantee expires. If the Contractor fails to warn the Owner of a design or product defect of which the Contractor is aware, and if personal or property damage thereafter results from such design or product defect, the Contractor shall be liable jointly and severally with any other party responsible at law for all damages resulting from such defect.

6.38 Indemnification:

To the fullest extent permitted by laws and regulations, the Contractor agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

Survival of Obligations:

- 6.39 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

Preservation of Monuments and Stakes:

- 6.40 The Contractor shall carefully preserve all monuments, benchmarks, property pins, reference points, and stakes. The Contractor will be charged with the expense of replacement of any such items destroyed and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks which must be removed or disturbed shall be protected until they can be properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or benchmarks, but actual replacement shall be done by a licensed surveyor.

ARTICLE 7 - OTHER WORK

Related Work at Site:

- 7.0 Town may perform other work related to the Project at the site by Town's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to Contractor prior to starting any such other work, and (ii) Contractor may make a claim therefor as provided in Articles 10 or 11 if Contractor believes that such performance will involve additional expenses to Contractor or requires additional time and the parties are unable to agree as to the amount of extend thereof.
- 7.1 Contractor shall afford each other contractor who is a party to such a direct contract and each utility owner (and Town, if Town is performing the additional work with Town's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Project Manager and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor is said direct contracts between Town and such utility owners and other contractors.
- 7.2 If the proper execution or results of any part of Contractor's work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to the Project Manager in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in such other work.

Coordination:

- 7.3 Unless otherwise provided in the Supplementary Conditions, Town shall have sole authority and responsibility in respect of such coordination.
- 7.4 Should Contractor cause damage to the Work or property of any separate contract at the site, or should any

claim arising out of Contractor's performance of the Work at the site be made by any separate contractor against Contractor, Town, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. Contractor shall, to the fullest extent permitted by laws and regulations, indemnify and hold Town, its officers, employees, and agents harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against Town to the extent based on a claim arising out of Contractor's performance of the Work. If Contractor is delayed in performing or furnishing Work by any act or neglect of a separate contractor and Town and Contractor are unable to agree as the extent of any adjustment in Contract Time attributable thereto, Contractor may make a claim for an extension of time in accordance with Article 11. An extension of the Contract Time shall be Contractor's exclusive remedy with respect to Town and the Project Manager for any delay, disruption, interference of hindrance cause by any separate contractor.

ARTICLE 8 - TOWN RESPONSIBILITIES; PROJECT MANAGER

- 8.0 Except as otherwise provided in these General Conditions, the Town shall issue all communications to Contractor through Project Manager.
- 8.1 The Town shall not supervise, direct or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of the Work. The Town will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 8.2 The Project Manager shall have the following and such other responsibilities as are set forth in the Contract Documents or as assigned by the Town.

Clarifications and Interpretations:

- 8.2.1 The Project Manager will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Project Manager may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on the Town and Contractor. If the Town or Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, the Town or Contractor may make a written claim therefor as provided in Article 10 or 11.

Authorized Variations in Work:

- 8.2.2 The Project Manager may authorize minor variations in the work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project. These may be accomplished by a Field Order and will be binding on the Town and also on Contractor who shall perform the Work involved promptly.

Rejecting Defective Work:

- 8.2.3 Project Manager will have authority to disapprove or reject Work which Project Manager believes to be defective, that Project Manager believes will not produce a completed Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the completed Project. Project Manager will also have authority to require special inspection or testing of the work, whether or not the work is fabricated, installed or completed.

Determinations for Unit Prices:

- 8.2.4 Project Manager will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by Contractor, and the written decisions of Project Manager on such matters will be final, binding on the Town and Contractor and not subject to appeal (except as modified by Project Manager to reflect changed factual conditions).

Decisions on Disputes:

- 8.2.5 Project Manager will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 10 and 11 in respect of changes in the Contract Price or Contract Times will be referred initially to Project Manager in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to Project Manager and the other party to the Agreement promptly (but in no event later than fifteen days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to Project Manager and the other party within thirty days after the start of such occurrence or event unless Project Manager allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to Project Manager and the claimant within thirty days after receipt of the claimant's last submittal (unless Project Manager allows additional time). Project Manager will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. Project Manager's written decision on such claim, dispute or other matter will be final and binding upon the Town and Contractor.
- 8.2.6 When functioning under paragraphs 8.2.4 and 8.2.5, Project Manager will not show partiality to the Town or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Project Manager pursuant to paragraphs 8.2.4 and 8.2.5 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by the Town or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by laws or regulations.

8.3 Limitations on Project Manager's Authority and Responsibilities:

- 8.3.1 Neither Project Manager's authority or responsibility under this Article or under any other provision of the Contract Documents nor any decision made by Project Manager in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by Project Manager shall create, impose or give rise to any duty owed by Project Manager to Contractor, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.
- 8.3.2 Project Manager will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of the Work. Project Manager will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 8.3.3 Project Manager will not be responsible for the acts or omissions of Contractor or of any

Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

- 8.3.4 Project Manager's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered in connection with the final Application for Payment will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

ARTICLE 9 - CHANGES IN THE WORK

- 9.0 Without invalidating the Agreement and without notice to any surety, the Town may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- 9.1 If the Town and Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 10 or 11.
- 9.2 Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented except in the case of an emergency as provided in paragraph 6.29 or in the case of uncovering Work as provided in paragraph 12.8.
- 9.3 The Town and Contractor shall execute appropriate Change Orders or Written Amendments recommended by Project Manager covering:
- 9.3.1 changes in the Work which are (i) ordered by the Town, (ii) required because of acceptance of defective Work or correcting defective Work, or (iii) agreed to by the parties:
- 9.3.2 changes in the Contract Price or Contract Times which are agreed to by the parties; and
- 9.3.3 changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Project Manager pursuant to paragraph 8.2.5.
- 9.4 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to all direct, indirect, and impact costs and time associated with such change and any and all adjustments to the Contract Price and the Contract Times. In the event a Change Order increases or decreases the Contract Price, Contractor shall include the Work covered by such Change Order in Applications for Payment as if such Work was originally part of the Contract Documents.
- 9.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 10 - CHANGE OF CONTRACT PRICE

- 10.0 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken

by Contractor shall be at Contractor's expense without change in the Contract Price.

- 10.1 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to Project Manager promptly (but in no event later than fifteen days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within thirty days after the start of such occurrence or event (unless Project Manager allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. If the Town and Contractor cannot otherwise agree on the amount involved, all claims for adjustment in the Contract Price shall be determined by Project Manager in accordance with paragraph 8.2.5. No claim for adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph.
- 10.2 The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:
- 10.2.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of these General Conditions pertaining to Unit Price Work);
- 10.2.2 where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 10.5.2);
- 10.2.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under the preceding paragraph, on the basis of the Cost of the Work (determined as provided in paragraphs 10.3 and 10.4) plus a Contractor's fee for overhead and profit (determined as provided in paragraph 10.5).

Cost of the Work:

- 10.3 The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Town, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 10.4:
- 10.3.1 Certified payroll record costs for employees in the direct employment of Contractor in the performance of the Work under schedules of job classifications shall be submitted to the Project Manager with the claim. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the Town.
- 10.3.2 Invoices for cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith shall be submitted to the Project Manager with the claim. All cash discounts shall accrue to Contractor unless the Town deposits funds with Contractor with which to make

payments, in which case the cash discounts shall accrue to the Town. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall be in accordance with the State Department of Highways, Division of Highways, State of Colorado Standard Specifications for Road and Bridge Construction. If the materials used in performing the extra Work are taken from the Contractor's stock, then in lieu of invoices the Contractor shall furnish an affidavit, certifying that such materials were taken from its stock, that the quantity claimed was actually used in the Work, and that the price and transportation claimed represent the actual cost to the Contractor shall be submitted to the Project Manager with the claim.

10.3.3 Payments made by Contractor to the Subcontractors for Work performed or furnished by Subcontractors. If required by the Town, Contractor shall obtain competitive bids from subcontractors acceptable to the Town and Contractor and shall deliver such bids to the Town who will then determine, with the advice of Project Manager, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in paragraphs 10.3, 10.4, 10.5 and 10.6. All subcontracts shall be subject to the other provisions of the Contract Documents as applicable.

10.3.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed for services specifically related to the Work.

10.3.5 Supplemental costs including the following:

10.3.5.1 The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

10.3.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

10.3.5.3 Rental rates of all construction equipment and machinery and the parts thereof which has been authorized by the Project Manager, the Contractor will be paid for the use of equipment in the manner hereinafter specified. Rental rates will be from the current edition of the Rental Rate Blue Book for Construction Equipment and will be determined as follows:

$$\text{Hourly rate:} \quad \text{RR} = (\text{ADJ BB}/176)(\text{RF})(\text{SAF}) + \text{EOC}$$

Where:

- RR = Hourly rental rate
- ADJ BB/176 = Blue Book Monthly Rate adjusted for year of manufacture/176
- RF = Regional Factor of 1.06
- SAF = State Adjustment Factor of 1.05
- EOC = Estimated Hourly Operating Costs from Blue Book

With each claim, the Contractor shall submit the rental rate calculations including copies of the appropriate pages of the Blue Book for each piece of equipment listed in the claim.

Rental of equipment not owned by the Contractor will be paid for by invoice cost plus operating cost (EOC). Copies of the applicable pages of the Rental Rate Blue Book for Construction Equipment shall be submitted to the Project Manager with the claim.

If equipment is used intermittently and when not in use could be returned to its rental source at less expense to the Town than holding it at the Work site, it shall be returned unless the Contractor elects to keep it at the Work site at no expense to the Town. The rental of any such equipment, machinery or parts shall cease when the use of the equipment is no longer necessary for the Work. No payment will be made for the use of tools which have a replacement value of \$200.00 or less. Operators will be paid for separately as provided in paragraph 10.3.1. Certified invoices for rental cost of all construction equipment and machinery incorporated in the Work shall be submitted to the Project Manager with the claim.

10.3.5.4 Sales, consumer, use or similar taxes related to the Work, and for which Contractor is liable, imposed by laws and regulations.

10.3.5.5 The cost of utilities, fuel and sanitary facilities at the site.

10.4 The term Cost of the Work shall not include any of the following:

10.4.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.3.1 or specifically covered by paragraph 10.3.2--all of which are to be considered administrative costs covered by the Contractor's fee.

10.4.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

10.4.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

10.4.4 Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same.

10.4.5 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

10.4.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.3.

10.5 The Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

10.5.1 a mutually acceptable fixed fee; or

10.5.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the work:

10.5.2.1 for costs incurred under paragraphs 10.3.1 and 10.3.2, the Contractor's fee shall be fifteen percent;

10.5.2.2 for costs incurred under paragraph 10.3.3, the Contractor's fee shall be five percent;

10.5.2.3 where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 10.3.1, 10.3.2, 10.3.3 and 10.5.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 10.3.1 and 10.3.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

10.5.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 10.3.4, 10.3.5 and 10.4;

10.5.2.5 the amount of credit to be allowed by Contractor to the Town for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

10.5.2.6 when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with paragraphs 10.5.2.1 through 10.5.2.5, inclusive.

10.6 Whenever the cost of any Work is to be determined pursuant to paragraphs 10.3 and 10.4, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to Project Manager an itemized cost breakdown together with supporting data.

10.7 Cash Allowances:

10.7.1 It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to the Town. Contractor agrees that:

10.7.1.1 the allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

10.7.1.2 Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

10.7.2 Prior to final payment, an appropriate Change Order will be issued as recommended by Project Manager to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.8 Unit Price Work:

10.8.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Project Manager in accordance with paragraph 8.2.4.

10.8.2 Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

10.8.3 The Town or Contractor may make a claim for an adjustment in the contract Price in accordance with this Article if:

10.8.3.1 the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

10.8.3.2 there is no corresponding adjustment with respect to any other item of Work; and

10.8.3.3 if Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or the Town believes that the Town is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 - CHANGE OF CONTRACT TIMES

11.0 The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to Project Manager promptly (but in no event later than fifteen days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty days after such occurrence (unless Project Manager allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by Project Manager in accordance with paragraph 8.2.5 if the Town and Contractor cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.

11.1 Liquidated damages. The Town shall have the right to deduct liquidated damages from any amount due or that may become due to the Contractor, or to collect such liquidated damages from the Contractor or the Surety. The Town has the option to enforce liquidated damages or to waive such damages. The liquidated damage shall only apply to the Contractor's delay in performance. Liquidated damages are intended only to compensate the Town for additional the Town personnel efforts in administering the Contract after normally scheduled completion dates, and for Town governmental and citizen inconvenience, lost opportunities, and lost confidence in government and morale of government when work is not completed on time. Such damages are uncertain in amount and difficult to measure and prove accurately. By executing this contract, the Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Liquidated damages do not include any sums of money to reimburse the Town for extra costs which the Town may become obligated to pay on other contracts which are delayed or extended because of Contractor's failure to complete the Work within the time periods set forth in the Contract Documents. Liquidated damages are not intended to include litigation or attorneys' fees incurred by the Town, or other incidental or consequential damages suffered by the Town due to the Contractor's performance. If the Town charges liquidated damages to the Contractor, this shall not preclude the Town from commencing an action against the Contractor for other actual harm resulting from the Contractor's performance which is not due to the Contractor's delay in performance. In order to recover liquidated damages, the Town is under no obligation to prove the actual damages sustained by the Town due to the Contractor's delay in performance.

11.2 Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in this Article. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by the Town, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

- 11.3 The Contractor specifically waives any and all claims against the Town for damages resulting from any hinderance or delay caused by circumstances beyond the control of Contractor that prevents completing any part of the Work within the Contract Times (or Milestones), whether or not caused by the Town. The Contractor may instead be granted an extension of the Contract Times for which the Town will not claim liquidated damages, provided that the hinderance or delay is beyond the control of the Contractor. An extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay. In no event shall the Town be liable to Contractor, any subcontractor, any supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from delays caused by or within the control of Contractor, or delays beyond the control of Contractor whether or not caused by the Town.

ARTICLE 12 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Notice of Defects

- 12.0 Prompt notice of all defective Work of which the Town has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected or accepted as provided in this Article.

Access to Work:

- 12.1 The Town, Project Manager, Project Manager's Consultants, other representatives and personnel of the Town, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's site safety procedures and programs so that they may comply therewith as applicable.

Tests and Inspections:

- 12.2 Contractor shall give Project Manager timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 12.3 the Town shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
- 12.3.1 for inspections, tests or approvals covered by paragraph 12.4 below:
 - 12.3.2 that costs incurred in connection with tests or inspections conducted pursuant to paragraph 12.8 below shall be paid as provided in said paragraph; and
 - 12.3.3 as otherwise specifically provided in the Contract Documents.
 - 12.3.4 any and all retesting of soil necessitated by the Contractor's operations or inability to obtain specified density test results on the first attempt shall be the sole responsibility and costs of the Contractor to achieve required passing test results. Retesting required because of non conformance to specified requirements shall be performed by the independent firm employed by the Town. Payment for retesting will be charged to the Contractor by deducting inspection, testing and administrative charges from the Contract Price.

- 12.4 If laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Project Manager the required certificates of inspection, or approval. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the Town's and Project Manager's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- 12.5 If any Work (or the work of others) that is to be inspected, tested or approved is covered by Contractor without written concurrence of Project Manager, it must, if requested by Project Manager, be uncovered for observation.
- 12.6 Uncovering Work as provided in paragraph 12.5 shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover the same and Project Manager has not acted with reasonable promptness in response to such notice.

Uncovering Work:

- 12.7 If any Work is covered contrary to the written request of Project Manager, it must, if requested by Project Manager, be uncovered for Project Manager's observation and replaced at Contractor's expense.
- 12.8 If Project Manager considers it necessary or advisable that covered Work be observed by Project Manager or inspected or tested by others, Contractor, at Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and the Town shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 10.

The Town May Stop the Work:

- 12.9 If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Town may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Town to stop the Work shall not give rise to any duty on the part of the Town to exercise this right for the benefit of Contractor or any surety or other party.

Correction or Removal of Defective Work:

- 12.10 If required by Project Manager, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Project Manager, remove it from the site and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

Acceptance of Defective Work:

- 12.11 If, instead of requiring correction or removal and replacement of defective Work, the Town (and, prior to Project Manager's recommendation of final payment, also Project Manager) prefers to accept it, the Town may do so. Contractor shall play all claims, costs, losses and damages attributable to the Town's evaluation of and determination to accept such defective Work (such costs to be approved by Project Manager as to

reasonableness). If any such acceptance occurs prior to Project Manager's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Town shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Town may make a claim therefor as provided in Article 10. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to the Town.

The Town May Correct Defective Work:

12.12 If Contractor fails within a reasonable time after written notice from Project Manager to correct defective Work or to remove and replace rejected Work as required by Project Manager in accordance with paragraph 12.10, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the Town may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the Town shall proceed expeditiously. In connection with such corrective and remedial action, the Town may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the Town has paid Contractor but which are stored elsewhere. Contractor shall allow the Town, the Town's representatives, agents and employees, the Town's other contractors and Project Manager and Project Manager's Consultants access to the site to enable the Town to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the Town in exercising such rights and remedies will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Town shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Town may make a claim therefor as provided in Article 10. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the Town of the Town's rights and remedies hereunder.

ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

13.0 Progress payments on account of Lump Sum Bid Price will be based on percentage of work completed.

Application for Progress Payment:

13.1 At least twenty days before the date established for each progress payment (but not more often than once a month), Contractor shall submit to Project Manager for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents or as may be required by Project Manager. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the Town has received the materials and equipment free and clear of all Liens, claims, security interests, or encumbrances and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the Town's interest therein, all of which will be satisfactory to the Town. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. With each application for payment the Contractor shall submit a notarized waiver(s) of claim signed by the Contractor acceptable in form to the Project Manager. The waiver of claim for payment for the work of the Contractor shall equal the amount of the previous payment distributed to the Contractor for work of the

Contractor and the amount of the total previous payment distributed to the Contractor.

Contractor's Warranty of Title:

- 13.2 Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the Town no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

- 13.3 Project Manager will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the Town, or return the Application to Contractor indicating in writing Project Manager's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Unless refused pursuant to the Contract Documents, the amount recommended will become due twenty days after presentation of the Application for Payment to the Town with Project Manager's recommendation, and when due will be paid by the Town to Contractor.
- 13.4 Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to the Town, based on Project Manager's on-site observations of the executed Work as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules, that to the best of Project Manager's knowledge, information and belief:
- 13.4.1 the Work has progressed to the point indicated.
- 13.4.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation), and
- 13.4.3 the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled insofar as it is Project Manager's responsibility to observe the Work.
- 13.5 However, by recommending any such payment Project Manager will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the Town or entitle the Town to withhold payment to Contractor.
- 13.6 Project Manager's recommendation of any payment, including final payment, shall not mean that Project Manager is responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work, or for any failure of Contractor to perform or furnish Work in accordance with the Contract Documents.
- 13.7 Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make the representations to the Town referred to in paragraph 13.4. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Project Manager's opinion to protect the Town from loss because:

- 13.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,
- 13.7.2 the Contract Price has been reduced by Written Amendment or Change Order,
- 13.7.3 the Town has been required to correct defective Work or complete Work,
- 13.7.4 Project Manager has actual knowledge of the occurrence of any of the events enumerated in paragraph 14.1.
- 13.8 In addition to the retainages set forth in the Contract Documents, the Town may retain one hundred percent (100%) of all progress payments for any unsatisfactory performance of the Work and any payment recommended by the Project Manager, including without limitation:
- 13.8.1 Defective work or failure to repair or replace defective work;
- 13.8.2 Claims filed against the Contractor, or reasonable evidence indicating probable filing of such claims;
- 13.8.3 Failure of the Contractor to make adequate or proper payments to subcontractors or suppliers for materials, equipment or labor;
- 13.8.4 Failure to obtain necessary permits or licenses, or to comply with applicable laws or regulations, unless such noncompliance is due to reasons beyond the control of the Contractor, or due to act of the Town or and Project Manager hired by the Town, or agents or employees thereof;
- 13.8.5 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price then unpaid;
- 13.8.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 13.8.7 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 13.8.8 As a set off for amounts due the Town on other items;
- 13.8.9 Collusion with other bidders in preparing the bid;
- 13.8.10 Actual knowledge of the occurrence of any of the events enumerated in paragraphs 13.6 or 14.1.
- 13.9 When the above reasons for withholding payment are removed and corrected to the Town's satisfaction, the Town shall make payment to the Contractor of the sums withheld pursuant to this paragraph, subject to the amounts required to be retained by the Contract Documents.
- 13.10 The Contractor shall make partial payments of the amount due to each of the Contractor's suppliers and subcontractors in the same manner as the Town is required to pay the Contractor under the Contract Documents, provided that the suppliers and subcontractors are performing to the Contractor's satisfaction. If the Town is notified that the Contractor is in arrears in payments to the Contractor's suppliers or subcontractors, the Town shall notify the Contractor and determine why such funds are being withheld. If the Town determines that no legitimate basis exists for the Contractor's withholding of such payments, the Town may, five (5) days after the mailing of written notice to the Contractor, make such payments directly to the Contractor's suppliers or subcontractors from funds which otherwise would be due the Contractor.

Substantial Completion:

- 13.11 When Contractor considers the entire Work ready for its intended use Contractor shall notify the Town in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Project Manager issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Town, Contractor and Project Manager shall make an inspection of the Work to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager will notify Contractor in writing giving the reasons therefor. If Project Manager considers the Work substantially complete, Project Manager will prepare and deliver to the Town a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The Town shall have seven days after receipt of the tentative certificate during which to make written objection to Project Manager as to any provisions of the certificate or attached list. If, after considering such objections, Project Manager concludes that the Work is not substantially complete, Project Manager will within fourteen days after submission of the tentative certificate to the Town notify Contractor in writing, stating the reasons therefor. If, after consideration of the Town's objections, Project Manager considers the Work substantially complete, Project Manager will within said fourteen days execute and deliver to the Town and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Project Manager believes justified after consideration of any objections from the Town. At the time of delivery of the tentative certificate of Substantial Completion, Project Manager will deliver to the Town and Contractor a written recommendation as to division of responsibilities pending final payment between the Town and Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless the Town and Contractor agree otherwise in writing and so inform Project Manager in writing prior to Project Manager's issuing the definitive certificate of Substantial Completion. Project Manager's aforesaid recommendation will be binding on the Town and Contractor until final payment.
- 13.12 The Town shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but the Town shall allow Contractor reasonable access to complete or correct items on the tentative list.

Partial Utilization:

- 13.13 Use by the Town at the Town's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) the Town, Project Manager, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the Town for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:
- 13.13.1 the Town at any time may request Contractor in writing to permit the Town to use any such part of the Work which the Town believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to the Town that such part of the Work is substantially complete and request Project Manager to issue a certificate of Substantial Completion for that part of the Work. Contractor at any time may notify the Town in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Project Manager to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the Town, Contractor and Project Manager shall make an inspection of that part of the Work to determine its status of completion. If Project Manager does not consider that part of the Work to be substantially complete, Project Manager will notify the Town and Contractor in writing giving the reasons therefor. If Project Manager considers that part of the Work to be substantially complete, the provisions of paragraphs 13.11 and 13.12 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility

in respect thereof land access thereto.

Final Inspection:

- 13.14 Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Project Manager will make a final inspection with the Town and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

- 13.15 After Contractor has completed all such corrections to the satisfaction of Project Manager and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, marked-up record documents, and other documents. Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence satisfactory to the Town of the continuation of completed operations insurance and any insurance coverage written on a claims-made basis at final payment and one year thereafter; (ii) complete and legally effective claim releases signed by all suppliers and subcontractors in the form provided in the Contract Documents certifying that all outstanding claims for payment have been paid. The Contractor shall not receive final payment due under the Agreement until the Contractor obtains and files the foregoing items (i) and (ii).

- 13.15.1 Liens: Colorado Statutes do not provide for any right of lien against public buildings. In lieu thereof, §38-26-107, Colorado Revised Statutes, as amended, provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public work in that final payment may not be made to a Contractor until all such creditors have been put on notice by publication of such pending payment and given opportunity to stop payment to the Contractor in the amount of such claims. Pursuant to §38-26-107, C.R.S., any supplier may bring a suit and file a notice of lis pendens against the Town within ninety (90) days after the date set for final settlement. If any such supplier or person files any such claim and notice of lis pendens, the Town shall withhold retained amounts from final payments to the Contractor as are necessary to satisfy fully such claims. References to liens appearing in this Article shall be deemed as references to claims made pursuant to C.R.S. §38-26-101 et seq. unless the context requires otherwise.

Final Payment and Acceptance:

- 13.16 If, on the basis of Project Manager's observation of the Work during construction and final inspection, and Project Manager's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Project Manager is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Project Manager will, within ten days after receipt of the final Application for Payment, indicate in writing Project Manager's recommendation of payment and present the Application to the Town for payment. At the same time Project Manager will also give written notice to the Town and Contractor that the Work is acceptable subject to the provisions of paragraph 13.18. Otherwise, Project Manager will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Upon receipt of the Project Manager's recommendation for payment and the final Application for Payment, the Town shall order the publication of Notice of Final Payment as required by C.R.S. §38-26-107(1) and shall make final payment in accordance with C.R.S. 38-26-107(3).
- 13.17 If, through no fault of Contractor, final completion of the Work is significantly delayed and if Project

Manager so confirms, the Town shall, upon receipt of Contractor's final Application for Payment and recommendation of Project Manager, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the Town for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required by the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Project Manager with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

13.18 The making and acceptance of final payment will constitute:

13.18.1 a waiver of all claims by the Town against Contractor, except claims arising from unsettled Liens, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

13.18.2 a waiver of all claims by Contractor against the Town other than those previously made in writing and still unsettled.

13.18.3 No Waiver of Rights. Neither the inspection by the Town or any of its officials, employees, or agents, nor any order by the Town of payment of money, or any payment for, or acceptance of, the whole or any part of the work by the Town, nor any extension of time, nor any possession taken by the Town or its employees shall operate as a waiver of any provision of this contract, or of any power herein reserved to the Town, or any right to damages herein provided, nor shall any waiver of any breach in this contract be held to be a waiver of any other or subsequent breach.

Audit:

13.19 Subject to confidentiality in the treatment of all confidential financial data, the Contractor shall permit the Town to audit or inspect its records during the term of the contract, for a period of three (3) years following the completion of the contract, and for such further periods as may be necessary to resolve any matters which may be pending at that time. The purpose of this provision is to assure the contractor's compliance with the terms of the contract and to evaluate the Contractor's costs and performance under the contract.

ARTICLE 14 - SUSPENSION OF WORK AND TERMINATION

The Town May Suspend Work:

14.0 At any time and without cause, the Town may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to Contractor and Project Manager which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes an approved claim therefor as provided in Articles 10 or 11.

The Town May Terminate:

14.1 Upon the occurrence of any one or more of the following events:

14.1.1 if Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or

equipment or failure to adhere to the progress schedule established under paragraph 2.7 as adjusted from time to time pursuant to paragraph 6.5;

- 14.1.2 if Contractor disregards laws or regulations of any public body having jurisdiction;
- 14.1.3 if Contractor otherwise violates in any substantial way any provisions of the Contract Documents;
- 14.2 The Town may, after giving Contractor (and the surety, if any,) seven days' written notice and to the extent permitted by laws and regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the Town has paid Contractor but which are stored elsewhere, and finish the Work as the Town may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by the Town arising out of or resulting from completing the Work such excess will be paid to Contractor. If such claims, costs, losses and damages exceed such unpaid balance, Contractor shall pay the difference to the Town. Such claims, costs, losses and damages incurred by the Town will be reviewed by Project Manager as to their reasonableness and when so approved by Project Manager incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph the Town shall not be required to obtain the lowest price for the Work performed.
- 14.3 Where Contractor's services have been so terminated by the Town, the termination will not affect any rights or remedies of the Town against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by the Town will not release Contractor from liability.
- 14.4 Upon seven days' written notice to Contractor and Project Manager, the Town may, without cause and without prejudice to any other right or remedy of the Town, elect to terminate the Agreement. In such case, Contractor shall be paid (without duplication of any items):
 - 14.4.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 14.4.2 for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 14.4.3 for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
 - 14.4.4 for reasonable expenses directly attributable to termination.
- 14.5 Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

Contractor May Stop Work or Terminate:

- 14.6 If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety days by the Town or under an order of court or other public authority, or Project Manager fails to act on any Application for Payment within thirty days after it is submitted or the Town fails for thirty days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days' written notice to the Town, and provided the Town does not remedy such suspension or failure within that time, terminate the Agreement and recover from the Town payment on the same terms as provided in paragraph 14.4. In

lieu of terminating the Agreement and without prejudice to any other right or remedy, if Project Manager has failed to act on an Application for Payment within thirty days after it is submitted, or the Town has failed for thirty days to pay Contractor any sum finally determined to be due, Contractor may upon seven days' written notice to the Town stop the Work until payment of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from making claim under Articles 10 or 11 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping Work as permitted by this paragraph.

ARTICLE 15 - MISCELLANEOUS

Giving Notice:

15.0 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

15.1 When any period of time is referred to in the Contract Documents by days, it will be computed to include the first and the last day of such period.

Notice of Claim:

15.2 Should the Town or Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

15.3 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and all of the rights and remedies available to the Town thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Interest:

15.4 Intentionally Omitted.

Third Parties:

15.5 The contract is not intended to create any right in or for the public or any member thereof, any subcontractor or supplier, or any other third party, or to authorize anyone not a party to the contract to maintain a suit to enforce its terms. The duties, obligations, and responsibilities of the parties to the contract, with respect to third parties, shall remain as imposed by law. This paragraph shall not apply to any surety to the extent it is acting under any labor and materials bond or performance bond entered into by the Contractor.

Severability:

- 15.6 To the extent that the performance of the parties' obligations may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision of the contract be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other contract term or provision.

Equal Opportunity Employer:

- 15.7 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard for their race, color, religion, age, sex, disability or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 15.8 The Contractor shall be in compliance with the appropriate provisions of the Americans with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of the Agreement by the Town.

Assignment and Subcontracting

- 15.9 The Contractor shall not assign by power of attorney or otherwise any of the money payable under this contract unless written consent of the Town has been obtained. No right under this contract, nor claim for any money due or to become due hereunder shall be asserted against the Town or persons acting for the Town by reason of any so-called assignment of this contract, or any part thereof, unless such assignment has been authorized by the written consent of the Town. In case the Contractor is permitted to assign moneys due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of the work.
- 15.10 The Town reserves the right to disapprove the use of any or all subcontractors which, in the Town's opinion, are not reasonably capable of performing the work required.
- 15.11 Should any subcontractor fail to perform in a satisfactory manner the work undertaken, the subcontractor shall be immediately terminated by the Contractor upon notice from the Town. The Contractor shall be as fully responsible and accountable to the Town for the acts and omissions of subcontractors and of persons either directly or indirectly employed by Contractor. Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Town.

No Arbitration

- 15.12 Except as may otherwise be provided by law, or agreed to by stipulation of the Town, no claims, disputes, or other disagreements arising out of Work under the contract shall be decided by arbitration. If at any time during the performance of the work the Town agrees to submit a dispute to arbitration, then the dispute shall be decided in accordance with the Construction Industry Rules of the American Arbitration Association. If the arbitrator or arbitration panel adopts the Town's legal position with respect to the claim, dispute, or other disagreement, the Contractor shall reimburse the Town for reasonable attorneys' fees and other costs incurred by the Town in going to arbitration and the prevailing rate in the Town for any services rendered by the Town Attorney and employees consultants assisting the Town Attorney and discovery and litigation costs. However, if the Contractor prevails in the arbitration, the Town shall not reimburse the

Contractor for such costs. Unless otherwise agreed in writing, the Contractor shall carry on the work and maintain its progress during the arbitration proceedings, and the Town shall continue to make payments to the Contractor in accordance with the Contract Documents.

PERFORMANCE BOND

_____, as Principal, hereinafter called the Contractor, and

_____, as Surety, with general offices in

_____ a Corporation organized under the laws of the State of _____, and authorized to transact business in the State of Colorado, are hereby bound unto the Town of Bennett, Colorado, as Obligee, hereinafter called the Town, in the penal sum of _____ (\$ _____) in the United States currency, for the payment of which sum the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Contractor has entered into a written contract with the Town dated _____, 20____, for _____ in accordance with plans and specifications contained in the Contract, a copy of which Contract is attached hereto and made a part hereof and is hereinafter referred to as the Contract;

NOW, THEREFORE, the conditions of this performance bond are such that, if the Contractor shall satisfactorily perform the Contract, then this bond shall be null and void; otherwise, the Surety shall promptly remedy the default, or shall promptly 1) Complete the Contract in accordance with its terms and conditions, or 2) Obtain a Bid or Bids for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the Town elects, upon determination by the Town and the Surety jointly of the lowest responsible bidder, arrange for a Contract between such Bidder and the Town, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the costs of completion plus liquidated damages additional costs pursuant to Section 11.1 of the General Conditions of the Contract less the balance of the contract price, but not exceeding the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the Town to the Contractor under the Contract and any amendments thereto, less the amount paid by the Town to Contractor.

In addition, if the Contractor or a subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Contractor or subcontractor in performance of the Contract, or shall fail to duly pay any person who supplies rental machinery, tools, or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in the amount not exceeding the sum specified in the bond together with interest at a rate of eight percent per annum.

In addition to the other conditions hereof, this bond shall include all provisions set forth in Section 38-26-106, C.R.S.

THE UNDERSIGNED SURETY for value received hereby agrees that no extension of time, change in, addition to, or other modification of the terms of the Contract of Work to be performed thereunder or the specifications of the Contract Documents shall in any way affect its obligation on this bond and the Surety does hereby waive notice of any such extension of time, change, addition, or modifications.

SIGNED AND SEALED this ___ day of _____, 20 ____.

(Contractor)

(Surety Company)

By: _____
(President)

Address: _____

(Attest)

By:
(Attorney-in-fact)

LABOR AND MATERIAL PAYMENT BOND

BOND NUMBER:

KNOW ALL MEN BY THESE PRESENCES: that

(Firm) _____
(Address) _____
(an Individual), (a Partnership), (a Corporation), hereinafter referred to as "the Principal", and

(Firm) _____
(Address) _____

hereinafter referred to as "the Surety", are held and firmly bound unto the
TOWN OF BENNETT, 207 MUEGGE WAY, BENNETT, COLORADO a Municipal Corporation, hereinafter
referred to as "the Owner", in the penal sum of

_____ Dollars
(\$ _____) in lawful money of the United States, for the payment of which sum well and truly
to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Contract
with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and
made a part hereof for the performance of

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors and corporations
furnishing materials for or performing labor in the prosecution of the Work provided for in such Contract, and any
authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on
machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all
insurance premiums on said Work, and for all labor, performed in such Work whether by Subcontractor or
otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or
the specifications accompanying the same shall in any way affect its obligation on this Bond; and it does hereby
waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work
or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of
any beneficiary hereunder, whose claim may be unsatisfied.

In addition to the other conditions hereof, this bond shall include all provisions set forth in Section 38-26-105,
C.R.S.

IN WITNESS WHEREOF, this instrument is executed in (3) counterparts, each one of which shall be deemed an
original, this _____ day of _____, 2022.

IN THE PRESENCE OF:

PRINCIPAL:
BY: _____

(Title)

(Corporate Seal)

Addresses:

IN THE PRESENCE OF:

OTHER PARTNERS:

By: _____

By: _____

IN THE PRESENCE OF:

SURETY:

By: _____

(Attorney-in fact)

(Surety Seal)

Address:

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is a Partnership, all partners must execute Bond.

IMPORTANT: Surety Company must be authorized to transact business in the state of Colorado and be acceptable to the Owner.

**TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249**

NOTICE OF AWARD

DATE: _____

To: _____

PROJECT: _____

Please be advised that on _____, 20____, the Town of Bennett, Colorado awarded the: _____
Project to your company in the amount of \$ _____ per your low unit price bid. In accordance with the Contract Documents, you are required to execute ___ copies of the Contract and return all copies with the required bonds and certificates of insurance within 10 days of the date of this Notice of Award.

The beginning date of the Contract shall be the date the purchase order is issued which shall be the official notice to proceed.

Failure to comply with these conditions within the time specified will entitle the TOWN to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

TOWN OF BENNETT, COLORADO

BY: _____

TITLE: _____

DATE: _____

ACCEPTANCE OF NOTICE BY CONTRACTOR:

BY: _____

TITLE: _____

DATE: _____

TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249

NOTICE TO PROCEED

DATED: _____

To: _____

PROJECT: _____

CONTRACT DATE: _____

You are hereby notified that the Purchase Order for the above Contract has been issued, therefore the Contract Time under the above Contract will commence to run on _____, 20___. On that date, you are to begin performing the Work in accordance with the Contract Documents and you are to complete the Work within _____ Contract Days thereafter. The date of substantial completion of all Work is therefore _____, 20___.

TOWN OF BENNETT, COLORADO

BY: _____

TITLE: _____

DATE: _____

ACKNOWLEDGEMENT

Receipt of the above Notice To Proceed is hereby acknowledged.

CONTRACTOR

BY: _____

TITLE: _____

DATE: _____

TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249

WORK CHANGE DIRECTIVE

NO. _____

PROJECT: _____

DATE ISSUED: _____

EFFECTIVE DATE: _____

You are directed to proceed promptly with the following change(s):

DESCRIPTION:

PURPOSE OF WORK CHANGE DIRECTIVE:

ATTACHMENTS: (LIST DOCUMENTS SUPPORTING CHANGE):

If a claim is made that the above change(s) have affected Contract Price or Contract Times, any claim for a Change Order based thereon will involve one or more of the following methods of determining the effect of the change(s).

Method of determining change in Contract Price: Method of determining change in Contract Times:

<input type="checkbox"/> Unit Prices	<input type="checkbox"/> Contractor's Records
<input type="checkbox"/> Lump Sum	<input type="checkbox"/> Engineer's Records
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Estimated increase (decrease) in Contract Price: \$ _____

Estimated increase (decrease) in Contract Times: _____

Substantial Completion: _____ days; If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Ready for final payment: _____ days. If the change involves an increase, the estimated times are not to be exceeded without further authorization.

RECOMMENDED:

TOWN OF BENNETT, COLORADO

BY: _____

TITLE: _____

DATE: _____

ACCEPTED:

CONTRACTOR

BY: _____

TITLE: _____

DATE: _____

**TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249**

CHANGE ORDER

CHANGE ORDER NO. _____

PROJECT: _____

DATE ISSUED: _____

CONTRACT DATE: _____

The following changes are hereby made to the Contract Documents:

CHANGES: _____

JUSTIFICATION:

CHANGES TO CONTRACT PRICE:

Current CONTRACT PRICE adjusted by previous CHANGE ORDER(s): _____

Change in CONTRACT PRICE for this CHANGE ORDER: _____

The new CONTRACT PRICE including this CHANGE ORDER will be: _____

CHANGES TO CONTRACT TIME:

The CONTRACT TIME will be changed by: _____ calendar days

The completion date adjustment by previous CHANGE ORDER(s) is: _____

Adjusted completion date per this CHANGE ORDER: _____

APPROVALS REQUIRED

RECOMMENDED BY:

BY: _____

TITLE: _____

DATE: _____

ACCEPTED BY CONTRACTOR:

BY: _____

TITLE: _____

DATE: _____

APPROVED BY OWNER:

BY: _____

TITLE: _____

DATE: _____

**TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249**

CLAIM RELEASE

Application for Payment Number: _____

Application for Payment Amount: _____

Application for Payment Date: _____

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby releases the Town of Bennett, Colorado and waives all rights of the undersigned to file a claim for material, equipment, tools, machinery or services heretofore furnished for use in and for labor heretofore performed upon the construction, alteration, addition to or repair of the structure or improvements described in the Contract Documents as:

PROJECT: _____

DESCRIPTION OF PROPERTY: _____

We acknowledge that the foregoing is an adequate description of the real property and improvement inasmuch as the foregoing description is the description given in the Contract Documents which govern the performance of the Work for which consideration has been received.

In executing this release, we certify that all claims for labor or materials, or both, furnished or performed by the undersigned or on our behalf by our material suppliers or subcontractors have been paid or that satisfactory arrangements for payment have been made.

In further consideration of the payment made or to be made to the undersigned and to induce said payment, we agree to defend, indemnify, and hold harmless the Town of Bennett from any claim or claims on the part of our material suppliers, laborers, employees, servants, and agents, or subcontractors arising from our work on this project, and we further agree to fully satisfy any such claim brought against the TOWN and reimburse the TOWN for any and all costs, including reasonable attorney fees, which it may incur as a result of such claims.

This release is valid only if check no. _____, drawn by _____ on the _____ bank, for \$ _____, dated _____, 20____, is paid.

SUPPLIER OR SUBCONTRACTOR

CONTRACTOR

BY: _____
TITLE: _____
DATE: _____

BY: _____
TITLE: _____
DATE: _____

**TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249**

CERTIFICATE OF COMPLETION

To: _____

PROJECT: _____

DATE ISSUED: _____

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

The Work to which this Certificate applies has been inspected by authorized representatives of the TOWN, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in the list does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within 10 Contract days of the above date of Substantial Completion.

CONTRACTOR shall maintain all contractual responsibilities until Final Acceptance.

The following documents are attached to and made a part of this Certificate of Substantial Completion:

Attachments:

(For items to be attached, see definition of Substantial Completion as supplemented and other specifically noted conditions precedent to achieving Substantial Completion as required by the Contract Documents.)

TOWN OF BENNETT, COLORADO:

ACCEPTED BY CONTRACTOR:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

**TOWN OF BENNETT
207 MUEGGE WAY
BENNETT, CO 80102
(303) 644-3249**

FINAL INSPECTION REPORT

To: _____

PROJECT: _____

DATE: _____

The Project Manager has performed final inspection of the Work, and accepts the Work subject to the Contractor's performance and completion of the following repairs, corrections and/or replacements:

The Project Manager **does/does not** (circle) hereby finally accept the Work, and the Project Manager **does/does not** (circle) hereby certify that the Contractor is eligible to receive final payment of the Work.

TOWN OF BENNETT, COLORADO:

ACCEPTED BY CONTRACTOR:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

